IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

OP.No. 36175 of 2002(F)

PETITIONER:

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1. BABURAJ S/O. THANKAPPAN NAIR,
   AGED 35 YEARS, KARIPELIKUDY, KOLAMULLY,
   MUNDOOR AMSOM DESOM, MUNDOOR ONE VILLAGE,
   PALAKKAD DISTRICT

2. CHANDRAN S/O. THANKAPPAN NAIR,
   AGED 38 YEARS, RESIDING AT DO.

3. AMMUKUTTY W/O. THANKAPPAN NAIR,
   AGED 60 YEARS, DO.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.JACOB SEBASTIAN

RESPONDENTS:

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1. THE TALUK LAND BOARD, PALAKKAD,
   REPRESENTED BY ITS CHAIRMAN.

2. THE VILLAGE OFFICER,
   EZHAKKAD-1 VILLAGE, PALAKKAD.

R1 & 2 BY GOVERNMENT PLEADER SRI SANDESH RAJA.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 61175/2002 IN O.P.36175/2002

DISMISSED.

6-8-2007. SD/- VK. MOHANAN, JUDGE.

APPENDIX
PETITIONER'S EXTS:

Ext.P1: TRUE PHOTOSTAT COPY OF THE GIFT DEED NO. 3278/1996 OF THE SRO, PARALI.

ET.P2: TRUE PHOTOSTAT COPY OF THE PARTITION DEED NO.3279/96 OF THE SRO, PARALI.

EXT.P3: TRUE PHOTOCOPY OF THE NOTICE ON 4-12-2001 TO SRI PAKAN.

EXT.P4: TRUE PHOTOSTAT COPY OF THE DEATH CERTIFICATE OF SRI PAKAN DT. 19-1-95.

EXT.P5: TRUE COPY OF THE PETITION BEFORE THE IST RESPONDENT UNDER SECTION 85 (8) OF THE KERALA LAND REFORMS ACT, 1963 PRAYING TO ALLOW THEM TO GET IMPLEADED IN LB 177/1973 ON 27-6-2002.

EXT.P6: TRUE COPY OF THE INTERIM ORDER WAS ORIGINALLY GRANTED FOR A PERIOD OF ONE MONTH.

EXT.P7: TRUE COPY OF THE ORDER DATED 27-8-2002.

//TRUE COPY//

V.K.MOHANAN, J.

O.P.NO. 36175 OF 2002

Dated this the 6th day of August, 2007

JUDGMENT

The petitioners are owners of property covered by Exts.P1 and P2. They approached this Court with a prayer for a direction to the respondents not to proceed further in taking possession of the property covered by Exts.P1 and P2 as surplus land, till passing an order after hearing them. It is also prayed for a writ of mandamus directing the Ist respondent to furnish the petitioners a copy of the order dated 24-1-2002 in L.B.No.177/1973. Another prayer is for a direction directing the respondents to stop all further proceedings pursuant to the order dated 24-1-2002 in L.B No.177/93 until the Petitioners are served with a copy of the order and is given an opportunity to challenge the same.

2. Counsel for the Petitioners has by drawn my attention to paragraph 10 of the counter affidavit filed by the State wherein it is stated that even according to the State, notice was issued to one Pakan who was the predecessor of the owner of the land in question on 4-12-2001 and no need to issue notice to the Petitioners. The petitioners have

produced Ext.P4 which is the death certificate with respect to the said Pakan which shows that the said Pakan died on 19-1-94. Therefore it appears that the so called notice issued by the Land Board might not have served and no purpose was served by issuing such notice.

3. It is pointed out by the counsel for the petitioners that there was a direction from this court directing the Land Board to serve a copy of the impugned order to the petitioners. Counsel for the petitioners submits that so far, such copy was not served on them.

4. From the above facts and circumstances, it appears that the proposed actions are without hearing the concerned and affected parties and it is only just and proper to give them an opportunity of being heard. It is also relevant to note that the order dated 24-1-2002 passed by the Ist respondent in L.B.No.177/93 has not been served so far on the petitioners in spite of the order issued from this Court. In the absence of such order, the petitioners may not be able to challenge the order effectively.

5. It is brought to my notice that the petitioners have already approached the Land Board by filing application under section 85(8) of the Act.

6. Accordingly, this O.P. is disposed of directing the Ist respondent to consider the matter afreshly after giving opportunity to the petitioners for submitting their explanation and highlighting their grievances. To enable the Ist respondent to pass fresh and appropriate orders, the order dated 24-1-2002 in L.B.No.177/1973 is quashed. Since the Ist respondent is ordered to consider the matter afreshly, after hearing the petitioners, Ext.P5 application which alleged to have filed by the petitioners required no consideration. Considering the long pendency of the matter, the Ist respondent is directed to pass appropriate orders, in the light of the above direction within a period of 3 months from the date of receipt of a copy of this judgment.

V.K.MOHANAN, JUDGE.

Kvm/

V.K.MOHANAN, J.

O.P.NO.36175 OF 2002

JUDGMENT

6-8-2007.